STATE OF MICHIGAN
IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals:
Fitzgerald, P.J., and Bandstra, J. and Schuette, JJ.

ESTATE OF DANIEL CAMERON, by DIANE CAMERON & JAMES CAMERON, Co-GUARDIANS,

Plaintiffs/Appellants,

Supreme Court No. 127018

Court of Appeals No. 248315

v.

Washtenaw Probate Case No. 02-549-NF
Hon. John N. Kirkendall

AUTO CLUB INSURANCE ASSOCIATION,

Defendant/Appellee,

PLAINTIFFS/APPELLANTS' BRIEF ON APPEAL

"ORAL ARGUMENT REQUESTED"

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TABLE OF CONTENTS

EXHIBITS

[Attached Hereto as Plaintiffs/Appellants' Appendix]

INDEX OF AUTHORITIES

Cases **Page(s)**

INDEX OF AUTHORITIES, CONT'...

Cases **Page(s)**

INDEX OF AUTHORITIES, CONT'...

Cases **Page(s)**

INDEX OF AUTHORITIES, CONT'...

Cases **Page(s)**

INDEX OF AUTHORITIES, CONT'...

Cases **Page(s)**

COURT RULES & STATUTES **Page(s)**

STATEMENT REGARDING ORDERS APPEALED AND RELIEF SOUGHT

This is a first party no-fault case arising out of a motor vehicle accident which occurred on August 22, 1996. The Plaintiffs seek recovery of attendant care expenses provided to James Cameron from August 1996 to August of 1999. The lawsuit was filed on May 9, 2002. James Cameron, the injured party was a minor (age 16) at the time the lawsuit was commenced.

The Defendant filed a motion for summary disposition arguing that the Plaintiffs' claim was barred by the one-year-back provision of MCL 500.3145(1). The trial court denied the Defendant's motion on April 7, 2003. (**APPENDIX EXHIBIT A**, pp. 1a-2a). A stipulation and order as to damages was entered on April 8, 2003. (**APPENDIX EXHIBIT B**, pp. 8a-11a). The Defendant filed an appeal of right with the Michigan Court of Appeals on July 13, 2004. (Ibid, p. 3a). The Court of Appeals issued a published opinion in Cameron v ACIA, 263 Mich App 95; 687 NW2d 354 (2004), which held that for causes of action arising after October 1, 1993, MCL 600.5851(1) does not toll the limitation of action provision MCL 500.3145(1) of the No-Fault Act. (**APPENDIX EXHIBIT C**, pp. 12a-17a). The Plaintiff filed a timely motion for reconsideration on July 27, 2004. The Court of Appeals denied Plaintiffs' motion for reconsideration on August 27, 2004. (**APPENDIX EXHIBIT D**, p. 18a, Order denying motion for reconsideration).

The Plaintiffs seeks an order reversing the Court of Appeals decision. In the alternative, Plaintiffs seek an order limiting the application of the Cameron precedent prospectively only. The issues presented in this case involve legal principles of major significance to the State's Jurisprudence and has a significant public interest. Courts in this State have consistently held that the one year Statute of Limitations of MCL 500.3145(1) of the No-Fault Act is subject to the

tolling provisions of MCL 600.5851(1) and therefore, giving a minor or incompetent person one year of grace after the termination of the disability or minority in which to commence an action.

The Cameron Court erroneously concluded by the amendatory language of the Statute, that the legislature intended by the 1993 amendment of MCL 600.5851(1) which included a minor change in language from "any action" to "an action under this act," to change the law. The Cameron Appeal Court concluded that there would be tolling of the Statute of Limitations only where the limitations of actions is found within the Revised Judicature Act and not allow tolling in cases where the limitation of actions is in a separate Statute which contains its own limitation period. Applying this analysis, a minor or incompetent person involved in a motor vehicle accident would be able to toll the Statute of Limitations in an auto negligence case since the limitation of action provision is found in RJA, however a claimant would be unable to toll the Statute of Limitations in a first party no-fault case because the No-Fault Act contains a separate limitation of actions provision for first party claims. MCL 500.3145(1). The idea that the legislature intended this result or that the language used required that result is illogical and without merit.

The Cameron court has acted as a super legislature and re-written MCL 600.5851(1) so that it results in unequal treatment of minors and incompetent individuals. In order to give meaning to a subtle change in statutory language, the Cameron court has defeated the legislative purpose of MCL 600.5851(1) which was created to protect minors and incompetent persons and applied an interpretation which results in absurd outcomes and harms those people whom the Statute was meant to protect. MCL 600.58581(1) is unambiguous and

requires no judicial construction of the statute.

Legal practitioners, hospitals, healthcare providers, guardians, conservators, have relied upon the clear language of the Statute and uncontradicted case law which indicated that a minor and incompetent's cause of action or claim under the No-Fault Act was tolled by the RJA under the provisions of MCL 600.5851(1). If this opinion is applied retroactively, there will be a class of persons by virtue of the fact that they were severely injured in motor vehicle accidents who are denied their right to payment of medical expenses, wage loss, and rehabilitation expenses. This is contrary to the purpose of the No-Fault Act which was to provide victims of motor vehicle accidents assured, adequate and prompt compensation for certain economic losses. Shavers v Attorney General, 402 Mich 554, 578-579; 267 NW2d 72 (1978). The Cameron decision is contrary to the goal of the No-Fault Act of providing a certain recovery for economic loss in return for reduced tort suit opportunities for non-economic loss.

Hospitals and healthcare providers in situations where injured persons have not filed their written application or lawsuits within one year of the accrual date will be denied appropriate reimbursement of medical bills. In certain cases, individuals will be required to obtain State Medicaid and/or other welfare benefits. This in effect will result in an additional financial burden judicially placed upon the State of Michigan and it's citizens. This certainly was not the result the legislature intended by the 1993 amendment of the Revised Judicature Act. Instead, the legislature intended to reduce the Statute of Limitations for minors in medical malpractice cases and limit the ability of prisoners to file lawsuits. The Cameron decision has given the legislative effect of denying no-fault benefits in situations where for what could be a multitude of reasons, a written no-fault application or claim was not filed

within one year of the accident or date that the expense was incurred.

In many cases, victims of horrific injuries and traffic accidents are often overwhelmed by their devastating situations that they simply do not even begin investigating their benefits and rights for a substantial period of time and in many cases for more than a year after the accident date. Other brain injured or emotionally impaired individuals simply do not understand their rights. Whatever the reason, there will be a class of individuals already disadvantaged by their injuries who will lose their right to seek no-fault benefits for which they were entitled under our no-fault system. Further, for those practicing attorneys, guardians, conservators, healthcare providers, hospitals who are under the belief that tolling applied to minors and incompetents many causes of actions and benefits will be lost for people who need benefits the most, incompetents and minors. The language of the Statute does not dictate the result pronounced by the Cameron court. This result certainly was not contemplated or intended by the legislature and certainly is not fair, just or equitable. Justice cries out to this Honorable Court to reverse the decision of the Court of Appeals or at a minimum, limit the injustice by limiting the application of this significant change in Law by applying this decision only to lawsuits filed after the date of the opinion. The legislature certainly did not intend the Cameron result and it is imperative that this Honorable Court reverse this injustice to the children and mentally infirmed that this decision decimates.

STATEMENT OF JURISDICTIONAL BASIS

This Honorable Court granted Plaintiffs/Appellants Application for Leave to Appeal on May 12, 2005.

STATEMENT OF STANDARD OF REVIEW

This appeal involves a statutory interpretation which is a question of Law for this Court's de novo review. DiPonio Construction Company, Inc. v Rosati Masonry Company, Inc., 246 Mich App 43, 47; 631 NW2d 59 (2001).

STATUTORY CONSTRUCTION

The fundamental rule of statutory construction is to determine the legislative intent. If the statutory language is unambiguous, the statute should be enforced as written. Weakland v Toledo Engineering Co., Inc., 467 Mich 344, 347; 656 NW2d 175 (2003). The court should not assume that the legislature inadvertently used one word or phrase instead of another. Detroit v Redford Twp., 253 Mich 453, 456, 235 NW 217 (1931). The words in a statute must be given their plain or commonly-understood meaning. Veenstra v Washtenaw Country Club, 466 Mich 155, 159-160; 645 NW2d 643 (2002). Courts should presume that every word is used for a purpose and attempt to "give effect to every clause and sentence." Pohutski v City of Allen Park, 465 Mich 675, 683; 641 NW2d 219 (2002). The structure, subject and context of the statute ordinarily provide information regarding this meaning. People v Vasquez, 465 Mich 83, 89; 631 NW2d 711 (2001). Courts are bound to give effect to all the words in a statute, and if possible, harmonize any conflicts that exist. See Nowell v Titan Ins. Co., 466 Mich 478, 482; 648 NW2d 157 (2002); Pohutski v City of Allen Park, supra.

STATEMENT OF QUESTIONS INVOLVED

I. DID THE COURT OF APPEALS COMMIT REVERSIBLE ERROR BY IGNORING THE PLAIN AND UNAMBIGUOUS LANGUAGE OF MCL 600.5851(1) WHICH ALLOWS TOLLING OF A MINOR'S AND INCOMPETENT'S CLAIM AND ERRONEOUSLY ENGAGED IN JUDICIAL CONSTRUCTION IN RULING THAT A MINOR'S CLAIM FOR NO-FAULT BENEFITS COULD NOT, BY THE TOLLING PROVISION OF MCL 600.5851(1) EXTEND THE ONE YEAR BACK RULE OF THE MICHIGAN NO-FAULT ACT, MCLA 500.3145(1)?

The trial court answered, "Yes."

The Court of Appeals answered, "No."

Plaintiffs/Appellants answer, "Yes."

Defendant/Appellee answers, "No."

II. DID THE COURT OF APPEALS DECISION OVERRULE CLEAR AND UNCONTRADICTED CASE LAW AND SHOULD THE DECISION BE APPLIED PROSPECTIVELY ONLY?

The trial court did not address this issue.

The Court of Appeals denied Plaintiffs' motion for reconsideration but otherwise did not address this issue.

The Plaintiffs/Appellants would answer: "Yes."

The Defendant/Appellee would answer: "No."

III. IF THIS COURT DETERMINES THAT THE CAMERON INTERPRETATION OF THE 1993 AMENDMENT OF MCL 600.5851(1) IS CORRECT, THEN IS THE 1993 AMENDMENT OF THE MCL 600.5851(1) UNCONSTITUTIONAL?

The trial court did not address this issue.

The Court of Appeals did not address this issue.

The Plaintiffs/Appellants would answer: "Yes."

The Defendant/Appellee would answer: "No."

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Plaintiffs seek no-fault benefits for attendant care services rendered from August 22, 1996 to August of 1999. Suit was filed May 9, 2002. (**APPENDIX EXHIBIT E**, pp. 19a-21a, docket entry dated May 9, 2002). Plaintiff was sixteen years old at the time of suit. Defendant appeals from a judgment in the stipulated amount of $182,500.00. Id. 20a, docket entry dated April 10, 2003.

Daniel Cameron was injured in an automobile accident which occurred in August 22, 1996. Id. 22a, (Complaint, para. 5, 7). His parents, Diane and James Cameron, brought suit for attendant care benefits from August 22, 1996 through August of 1999. Daniel was admitted into inpatient rehabilitation in August of 1999. Id. 20a, Plaintiffs' response to motion for summary disposition. (James Cameron Dep., p. 20-21, 37-38, 44-45, 53; Diane Joy Cameron Dep, p. 9, 20, 25).

On March 10, 2003, Defendant filed a Motion for Summary Disposition, arguing that Plaintiff's claim was barred by the one-year-back provision of MCL 500.3145(1). Id., docket entry of March 20, 2003. After hearing oral argument, the trial Court denied the motion. (**APPENDIX EXHIBIT F**, 23a-31a). On April 8, 2003, the trial court entered an order denying summary disposition for Defendant, granting summary disposition in favor of Plaintiff, and entering judgment in the amount of $182,500.00. **APPENDIX EXHIBIT E**, 20a. The parties stipulated that this amount was owed for past attendant if the claim was not barred by the one year back rule. (Id.).

The Defendant filed an appeal of right with the Michigan Court of Appeals. **APPENDIX EXHIBIT A**, p. 3a. The Court heard oral argument on June 8, 2004. On July 13, 2004, the Court of Appeals issued a published Opinion holding that for causes of action arising after October 1, 1993, MCL 600.5851(1) of the RJA does not toll MCL 500.3145(1) of the No-Fault Act and reversed the trial court. Id. 6a. The Plaintiff filed a timely motion for reconsideration on July 27, 2004. Id. The Court of Appeals denied the motion for reconsideration on August 25, 2004. Id.

Plaintiff timely filed Leave to Appeal with this Court. Leave was granted by this Court on May 12, 2005.

The Plaintiffs seek to reverse the Court of Appeals decision dated July 13, 2004 and the denial of the motion for reconsideration dated August 25, 2004, or for this Court to determine that the 1993 Amendment to MCL 600.5851(1) is unconstitutional. In the alternative, this Court should give prospective application to the Cameron decision.

ARGUMENT

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR BY IGNORING THE PLAIN AND UNAMBIGUOUS LANGUAGE OF MCL 600.5851(1) WHICH ALLOWS TOLLING OF A MINOR'S AND INCOMPETENT'S CLAIM AND ERRONEOUSLY ENGAGED IN JUDICIAL CONSTRUCTION IN RULING THAT A MINOR'S CLAIM FOR NO-FAULT BENEFITS COULD NOT, BY THE TOLLING PROVISION OF MCL 600.5851(1) EXTEND THE ONE YEAR BACK RULE OF THE MICHIGAN NO-FAULT ACT, MCLA 500.3145(1).

The Plaintiff seeks a reversal of the Court of Appeals decision holding that the statute of limitations tolling provisions found within MCL 600.5851(1) for minority and incompetence do not apply in no-fault cases. Under Michigan Law, the minority and mental incompetency tolling provisions has for the last 30 years been applied to minors as set forth in MCL 600.5851(1).

> "Sec.5851 Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in Section 5852[1]."

* * *

Michigan appellate courts first applied the tolling provisions contained in MCL 600.5851(1) to no-fault actions in the case of Rawlins v Aetna Casualty & Surety Division, 92 Mich App 268; 284 NW2d 782 (1979). In Rawlins, the court determined that the savings provisions of MCL 600.5851(1), applied to the No-Fault Act in a claim involving a minor. In this regard, the court stated at pages 274-277:

> "We now proceed to determine if the statute of limitations in the act is subject to the minority provision of the Revised Judicature Act, MCL 600.5851; MSA 27A.5851. . . . The case of Lambert v Calhoun, 394 Mich 179; 229 NW2d 332

(1975), considers and rules on this issue. . . . The Lambert case and the instant case appear to us to be practically the same. We hold that the general savings provisions of the Revised Judicature Act apply to causes of action created under the no-fault statute, a Michigan statute.

We also note that our court came to the same conclusion in considering the effect of the saving provisions of the Revised Judicature Act in applying it to the statute of limitations contained in the Probate Code. We refer to the case, Rosebrock v Vondette, 85 Mich App 416; 271 NW2d 257 (1978). It is also therein stated on page 423 as follows:

'A summary as to the practical effect of the above decision can be found in 22 Wayne L. Rev.:

"The result of Lambert was to overrule Holland and establish the rule that henceforth the minority savings provisions of the Revised Judicature Act applies [sic] to all statutorily created causes of action, as well as common law causes of action, even when the statute creating the right contains its own period of limitations." Atkinson, Torts, 22 Wayne L. Rev. 629, 648 (1976).'"

* * *

Two (2) years later, in Hartman v Insurance Company of North America, 106 Mich App 731; 308 NW2d 625 (1981), relying upon Rawlins, the Court of Appeals held that the insanity tolling provision of the RJA [MCL 600.5851(1)] applies to people who are injured in automobile accidents and are rendered mentally incompetent.

Following Hartman, the Court of Appeals decided Geiger v DAIIE, 114 Mich App 283, 290-291; 318 NW2d 833 (1982). In Geiger, the Court of Appeals held that the savings clause of the RJA also applies to the *"one-year back rule"* as well as the one-year *"notice"* provision contained within MCL 500.3145(1), with regard to no-fault claims brought by minors. The Geiger court reasoned that this result was necessary in order to advance the policy of RJA, Sec. 5851. Id., at p. 291. Otherwise, a contrary decision could deprive a person of benefits to which they were rightfully entitled.

The Defendant correctly points out that in 1993, MCL 600.5851 was revised as follows:

> *"(1) Except as otherwise provided in subsections (7) and (8), if* ***the person first entitled to make an entry or bring an action under this act*** *is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have one year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run."*
>
> (Emphasis supplied)

* * *

Prior to the 1993 amendment, the statute read:

> *"If* ***the person first entitled to make an entry or bring any action*** *is under 21 years of age, insane, or imprisoned at the time his claim accrues, he or those claiming under him shall have one year after his disability is removed through death or otherwise to make the entry or bring the action although the period of limitation has run. . . ."*
>
> (Emphasis supplied)

* * *

Irrespective of any other changes in the wording of the statute, Defendant incorrectly asserts that the change from *"any action"* to *"action under this act"* somehow changed the law so that the claims of a minor or incompetent person in the no-fault context cannot be tolled. At the heart of Defendant's argument is the mistaken assumption that Plaintiff's claim is not brought *"under this act,"* i.e., the RJA. The Revised Judicature Act is contained within MCL 600.101, *et seq*, and occupies five (5) volumes of the Michigan Compiled Laws Annotated. The RJA establishes the procedure and groundwork for our civil and criminal justice system. For example, it establishes the structure of the Supreme Court (Chapter 2), the structure of the Court of Appeals (Chapter 3), and the structure of the Circuit Courts (Chapter 5). The RJA prescribes the jurisdiction of the courts, the basis of jurisdiction, and various other procedural

guidelines within our civil justice system. It also prescribes a method for disputes to be resolved through the filing of a civil action. Specifically, at MCL 600.1901, the RJA states, *"a civil action is commenced by filing a complaint with the court."* Therefore, it is basic civil procedure that all lawsuits filed are brought "under this act," i.e., the RJA.

The RJA does not create causes of actions. The RJA creates no rights whatsoever. See Sam v Balardo, 411 Mich 405; 308 NW2d 142 (1981); Connelly v Paul Ruddy's Equipment Repair and Service Co., 388 Mich 146, 151; 200 NW2d 70 (1972), (noting that the purpose of the RJA "was to effect procedural improvements, not advance social, industrial or commercial policy in substantive areas.") Thus, the RJA creates no statutory right of action nor does it create any substantive common law rights. Rather, it creates the procedural rules for bringing lawsuits and the structure of the judicial branch of government, and in doing so, creates the basis for all lawsuits brought in our civil justice system.

The error in the Defendant's argument is that it fails to recognize that the RJA is a *procedural* statute. Thus, when MCL 600.5851(1) refers to a cause of action brought "under this act," it must of necessity be referring to *procedure*, not substantive law. The question is whether this case is procedurally brought under the RJA. This case is procedurally filed under the RJA. As indicated in MCL 600.1901, "a civil action is commenced by filing a complaint with the court." This case is, like every other common law or statutory cause of action instituted in a Michigan Circuit Court, a cause of action instituted under the procedural provisions of the RJA and subject to the procedural provisions of that act.

The preamble to RJA supports this legal analysis and states as follows:

"REVISED JUDICATURE ACT OF 1961
P.A.1961, No. 236, Eff. Jan. 1, 1963

An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; * * * to repeal all acts and parts of acts inconsistent with * * * or contravening any of the provisions of this act; and to repeal acts and parts of acts. Amended by P.A.1974, No. 52, §1, Imd. Eff. March 26, 1974; P.A.1999, No. 239, Imd. Eff. Dec. 28, 1999.

(Emphasis supplied)

* * *

The purpose of the Act included the desire to regulate the "courts of the state" including the "time within which civil actions and proceedings may be brought in said courts." The defense argument that a no-fault lawsuit filed in the state courts is not brought under RJA is contrary to the express purpose of the Statute.

Further, this Court has previously confirmed that R.J.A. is legislation that affects procedural rights:

"We cannot accept the defendants' view. However desirable the stated objectives might be, it is doubted that such was the legislative purpose. The statute in question is the Revised Judicature Act. It was drawn, as defendants point out, by a distinguished committee of lawyers, known as the Joint Committee on Michigan Procedural Revision. The purpose of the act was to effect procedural improvements, not advance social, industrial or commercial policy in substantive areas." Connelly v Paul Ruddy's Equipment Repair & Service Co., 388 Mich 146, 151; 200 NW2d 70 (1972).

* * *

Further support of this logic is found when looking at how the Courts have applied other provisions of RJA to no-fault causes of action. This Court has held that a plaintiff who recovers a Judgment for no-fault benefits payable under the No-fault Act is entitled to interest under the provisions of RJA (MCL 600.6013). See Wood v DAIIE, 413 Mich 573; 321 NW2d 653 (1982). Michigan Courts have consistently held that Judgment Interest is awardable in no-fault cases. Similarly, the Tort Reform provisions of RJA would not have any applicability to no-fault cases if no-fault cases are not brought under RJA. If the Cameron analysis is affirmed, then no-fault claims would not be brought under the Revised Judicature Act. Accordingly, the procedural rules of RJA would not apply to no-fault causes of action. This result is contrary to the express purpose of the Act.

The Court of Appeals in Cameron relied on the analysis contained in Lambert v Calhoun, 394 Mich 179; 229 NW2d 332 (1975), in support of its decision. In Lambert, this Court was faced with the question of whether or not the savings provision contained within the RJA applied to a claim brought under an act that had its own separate statute of limitations provision. Ultimately, the Lambert court concluded that the general savings provisions of the RJA set forth in MCL 600.5851(1) applied to all causes of action, whether statutory or common law and regardless of whether a statute which creates the claim contains its own separate statute of limitations. In so ruling, the Supreme Court specifically rejected the notion that the legislature intended to apply the RJA tolling provisions to some types of cases, but not to others. This conclusion regarding the legislature's intent is not affected by the phraseology in the first sentence of MCL 600.5851(1). Instead, the Lambert court was moved by public policy. In rendering its decision, the Supreme Court specifically rejected the so-called

"conditional rights analysis" which would prohibit application of the RJA savings provisions to those causes of action created by statutes that contain their own specific statute of limitations. In this regard, the Supreme Court stated at pages 191-192 of Lambert:

> *"There is scant reason to ascribe to a legislature an intent to distinguish between common-law and statutory causes of action in the application of saving provisions. This is especially without warrant in the application of domestic saving provisions to domestic statutory causes of action.*
>
> *The need and desirability for saving in one case are the same as in the other. Infants or insane persons are under the same disability whether their actions be common-law or statutory; the defendant in one case is generally in no greater need than the defendant in the other of protection from delay in the commencement of the action. We are unable to distinguish the two cases or to ascribe to the Legislature such an intention.*
>
> *There is no basis for indulging the assumption that the Legislature, aware of our former decisions, adopted the conditional right analysis. . . . We hold that the general saving provisions of the Revised Judicature Act apply to causes of action created by Michigan statutes."*
>
> * * *

Accordingly, Defendant's analysis that Lambert only applied the savings provision to all Michigan cases because of the former language of the statute which states, *"any action,"* is completely without merit. Policy and logic moved the Lambert court not semantics.

Following the 1993 amendment to the RJA, the Court of Appeals decided Professional Rehabilitation Associates v State Farm Mutual Auto Ins Co, 228 Mich App 167; 577 NW2d 909 (1998), where the court conclusively held the 1993 version of the tolling provision of MCL 600.5851(1) applies to no-fault claims. In Professional Rehabilitation, the Court of Appeals, five (5) years after the 1993 amendment to the RJA tolling provision went into effect, confronted the issue of whether or not the district court made an erroneous decision in holding that the tolling provision of the 1993 amendment to the RJA did not apply to a no-fault case dealing

with the payment of medical bills to a provider. The Court of Appeals, applying the new (1993) language, relied on the concepts set forth in Lambert and held that the tolling provisions of the RJA continue to apply to the No-Fault Act and, therefore, reversed the lower court. The insurer made the argument, as Defendant has in this case, that the no-fault statute's one year statute of limitations MCL 500.3145(1), applied and barred plaintiff's claim. The Court of Appeals disagreed with the insurance carrier's argument and held:

> *"Were it not for the savings provision in the Revised Judicature Act, we would hold that plaintiff's claim was time barred. However,* ***the general savings provision of the Revised Judicature Act applies to all causes of action created by Michigan statutes, even when the statute creating the right contains its own limitation period.*** *Rawlins v Aetna Casualty & Surety Company, 94 Mich App 268, 277; 284 NW2d 782 (1979). The savings provision applies to actions for the recovery of personal protection insurance benefits under the No-Fault Act. Geiger v DAIIE, 114 Mich App 283, 290-291; 318 NW2d 833 (1982)."*
>
> (Emphasis supplied)

* * *

In reaching this holding, it is noteworthy that the court actually quoted the 1993 version of MCL 600.5851(1) when making its decision. Accordingly, it was clear that the tolling provisions contained in MCL 600.5851(1) applied to the No-Fault Act, even after the 1993 amendment to that section went into effect.

The Defendant's basic argument is that the insertion of the words "under this act" from the language "any action" to now read "an action under this act" limits the tolling provision and prohibits its application to any statutory cause of action that contains it's own statute of limitations provision. See **APPENDIX EXHIBIT G**, pp. 32a-33a, 1993 Amendment of MCL 600.5851. The Defendant assumes that the reference to "under this act" changes the

meaning of the Statute. The addition of the language "under this act" in no way changes the applicability of tolling provisions to a no-fault first party action since all civil actions are regulated by the Revised Judicature Act. The statutory language "bring an action under this act. . ." is unambiguous and statutory interpretation is unnecessary. All civil actions are brought under RJA under the plain meaning of the statute. This Court in Jones v Grand Ledge Public Schools, 349 Mich 1; 84 NW2d 327 (1957), in quoting Justice Cooley from the early case of People v Blodgett, 13 Mich 127 (1865), restated the foremost rule of statutory construction:

> "There are certain well-settled rules for the construction of statutes, which no court can safely disregard. Where the statute is plan and unambiguous in its terms, the courts have nothing to do but to obey it. They may give a sensible and reasonable interpretation to legislative expressions which are obscure, but they have no right to distort those which are clear and intelligible. The fair and natural import of the terms employed, in view of the subject matter of the law, is what should govern."
>
> * * *

In MacQueen v Port Huron City Commission, 194 Mich 328; 160 NW2d 627 (1916), the Court stated:

> "The wording of the act is clear and plain. It is within the power of the Legislature. It declares the law in distinct language. It is a cardinal rule that the Legislature must be held to intend the meaning which it has plainly expressed, and in such cases there is no room for construction, or attempted interpretation to vary such meaning."
>
> * * *

The language of the amended statute is plain and unambiguous on its face. If a statute is unambiguous on its face, there is no need for further construction. Lansing v Lansing Township, 356 Mich 641, 649; 97 NW2d 804 (1959). The Lansing court articulated this rule as follows:

"The express wording of the statute in this case does not fall within the above provisions so as to justify judicial interpretation. Certainly it is plain, unambiguous and not subject to different interpretations by 2 reasonable minds. It is clear, definite, and would be easily understood by even those not trained in the law. The language of this statute, therefore, leaves no room for judicial construction." (See, also 73 AmJur2d, Statutes, s 194, p. 392, and 2A Sutherland, Statutory Construction (4th ed.), ch. 46).

* * *

Therefore, the Court of Appeals unnecessarily engaged in judicial construction and as a result rewrote the meaning of MCL 600.5851(1). The plain meaning of "bringing an action under this act" is clear and unambiguous. The statute applies to all civil actions. The use of the language "under this act" only limits the statute's application to court proceedings.[1] Further, judicial interpretation is only likely to lead to results never intended by the legislature. Therefore, judicial interpretation of MCL 600.5851(1) is unnecessary and this Court should enforce the plain meaning of the statute.

If this Court were to conclude that there was some degree of ambiguity and that the change in language must dictate an intentional change by the legislature, one could easily conclude that the language "under this act" merely clarifies that it is court causes of action under the Revised Judicature Act rather than any form of administrative proceedings which could be characterized as an action as well. The evolution of the language was as follows:

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[1]The addition of the language, "under this act," in MCL 600.5851(1) limits its application to court proceedings. Nonjudicial or administrative proceedings are not afforded the protections of MCL 600.5851(1). See Mair v Consumer Power Company, 419 Mich 74; 348 NW2d 256 (1984) which held that the tolling provision of MCL 600.5856 does not apply to nonjudicial proceedings such as administrative matters.

1950: "Any of the actions mentioned in this chapter."

1961: "Any action."

1972: "Bring an action."

1993: "An action under this act."

If the Court were to assume for purposes of argument that the Defendant is correct and there is some ambiguity and further assume that the language change meant something, the literal reading of the language coupled with the language in the Revised Judicature Act is easily justified to legislatively indicate that any court causes of action would be subject to the tolling provision as opposed to administrative actions.[2]

The Defendants are arguing, based on the phraseology change in the Statute that it was the legislative intent to return to the Holland case law and limit the legislative impact of the tolling provisions only to causes of action under RJA. The Defendant is asserting that the true legislative intent was to change the tolling provisions and return to the historical prior law. The main purpose of the 1993 amendment was intended to reduce the minority tolling provision for malpractice cases which the statutory amendment did in the later subsections of the tolling statute, (sections seven (7) and eight (8), and to eliminate tolling for prisoners (section one (1)). It is inconceivable that absent significant legislative history the legislature would by such an innocuous change in language bar a claim of an infant or incompetent person under the Michigan No-Fault Act.

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[2]The use of the words, "under this act," clarifies that the tolling provision does not apply to actions brought under the Administrative Procedures Act of 1969, MCLA 24.201, Public Employees Relations Act (PERA), MCLA 423.201, Teachers Tenure Act, MCLA 38.71, etc. Administrative actions are not afforded the protections of MCL 600.5851(1).

It is proper to use legislative history when a Statute is ambiguous and construction of an ambiguous provision is necessary. See In Re Certified Question from the U.S. Court of Appeals for Sixth Circuit, 468 Mich 109, 114; 659 NW2d 597 (2003).[3] Therefore, if this Court determines that the meaning of the amended statute is not clear and engages in construction or interpretation, use of legislative history is appropriate. See **APPENDIX EXHIBIT H**, pp. 34a-38a, the House legislative analysis section, analysis of the Statute of Limitation Amendment for the 1993 provision. The Senate Financial Agency Bill Analysis for that legislation is attached as **APPENDIX EXHIBIT I**, pp. 39a-45a. The Senate Bill clearly indicates that what the Statutory Amendment was attempting to simply change the tolling provision which had been afforded to people imprisoned to eliminate tolling for imprisonment and to change the Statute of Limitation provisions so that it reflects the shorter time periods for medical malpractice claims to be brought by injured minors. Nowhere in the analysis by either the Senate or the House, is there any provision suggesting a broad change in the Statute of Limitations limiting the tolling provision solely to common law causes of action. Furthermore, the first House legislative analysis section specifically discusses the tolling provision and under content states,

> "The Bill would amend the revised Judicature Act to eliminate imprisonment as a cause for tolling the Statute of Limitations in a Civil procedure. **The Bill would retain infancy and insanity as recognized disabilities for tolling the Statute of Limitations.**"
>
> (Emphasis supplied)

* * *

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[3]In footnote no. 5, this Court recognized the benefit of using legislative history only where a genuine ambiguity exists in the Statute.

Similarly, the Senate analysis discusses only the changes to minority dates of discovery and the fact that the amending provisions would affect minors in malpractice claims. Nowhere is there the slightest hint in the legislative analysis in the Senate that some broad based legislative change to limit tolling was contemplated or intended.

It is clear from the Senate and from the House legislative history that the only substantive changes that were being made were to the tolling provision for imprisoned individuals and tolling provisions for minors seeking to bring medical malpractice claims. The comment in the legislative history from the House, stating that the other minority and insanity tolling provisions are unaffected, clearly negates any suggestion of some broad based significant legislative intent to limit tolling as found by the Cameron court. If this Court is intent on construing the language of the statute, the statute should be liberally construed. RJA is remedial legislation. MCL 600.102 provides:

> "This Act is remedial in character, and shall be liberally construed to effectuate the intents and purposes thereof."

* * *

The 1993 amendment to MCL 600.5851 also added subsec (9) to (11). Subsections (9) and (10) read as follows:

> "(9) If a person was serving a term of imprisonment on the effective date of the 1993 amendatory act that added this subsection, and that person has a cause of action to which the disability of imprisonment would have been applicable under the former provisions of this section, an entry may be made or an action may be brought under this act for that cause of action which 1 year after the effective date of the 1993 amendatory act that added this subsection, or within any other applicable period of limitation provided by law.

(10) If a person died or was released from imprisonment at any time within the period of 1 year preceding the effective date of the 1993 amendatory act that added this subsection, and that person had a cause of action to which the disability of imprisonment would have been applicable under the former provisions of this section on the date of his her death or release from imprisonment, an entry may be made or an action may be brought under this act for that cause of action within 1 year after the date of his or her death or release from imprisonment, or within any other applicable period of limitation provided by law."

(Emphasis supplied)

* * *

The purpose of these subsections was to provide a grace period for prisoners suffering from the disability of imprisonment whose cause of action would have been tolled under the former provisions of MCL 600.5851. The language, "under this act," was also used in these subsections. Under the Defendant's analysis of the meaning of the words "under this act" prisoners would not have benefit of the grace period if their cause of action was a statutory cause of action which contained it's own limitation period. Accordingly, a prisoner would not be entitled to a grace period unless the limitation of action was contained in RJA. This construction is inconsistent with the statutory language "that person has a cause of action. . ." The words "cause of action" means any judicial cause of action and not simply causes of action referenced in RJA.

As stated previously, RJA does not create causes of action. It is clear from the use of the phrase "under this act" in subsections (9) and (10) that the technical change in language was not meant to create a limitation in tolling for statutory causes of action that contain their own limitation of action provisions. The use of the words "person has a cause of action" in these subsections is inconsistent with the Defendant's statutory construction. This Court has

consistently held that "courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." State Farm Fire & Cas. Co. v Old Republic Ins. Co., 466 Mich 142; 6444 NW2d 715 (2002). Therefore, this Court should not read, "under this act" so narrowly as to render nugatory the language, "person has a cause of action."

Furthermore, a change in phraseology should not change the operation of a statute which is well established in law and precedent unless the legislative intent to make such a change is unmistakable.

> "A mere change of phraseology, or punctuation, or the addition or omission of words in the revision or codification of statutes, does not necessarily change the operation or effect thereof, and will not be deemed to do so unless the intent to make such change is clear an unmistakable. Usually a revision of statutes simply iterates the former declaration of legislative will. No presumption arises from changes of this character that the revisers or the legislature in adopting the revision intended to change the existing law; but the presumption is to the contrary, unless an intent to change it clearly appears."
>
> * * *

See Johnson v Broderick, 75 ND 340, 368-369; 27 NW2d 849, 864 (1947).

For all of the reasons stated here, it is urged that not only the legislative intent was not to make the change and in fact this legislature and this legislation did not make such an outrageous change. For the Courts to tell an infant or incompetent person they have to file a written notice of claim within one year and for any suits for disputed benefits to hire a lawyer and bring a lawsuit within one year of those expenses, or be forever barred from life time benefits or benefits older than one year, would be a travesty of justice and common sense.

II.

THE COURT OF APPEALS DECISION OVERRULED CLEAR AND UNCONTRADICTED CASE LAW AND SHOULD BE APPLIED PROSPECTIVELY ONLY.

The general rule is that judicial decisions are to be given complete retroactive effect. See Lincoln v General Motors Corporation, 461 Mich 483, 491; 607 NW2d 73 (2000). Prospective application is normally limited to decisions that overrule clear and uncontradicted case law. See Adams v Department of Transportation, 253 Mich App 431; 655 NW2d 625 (2002).

Courts have generally held that the resolution of the issue of whether or not an opinion should be given prospective application depends on considerations of fairness and public policy. See Peterson v Superior Court, 31 Cal 3d 147, 152, 181 Cal Rptr. 784, 642 P2d 1305 (1982). In Placek v Sterling Heights, 405 Mich 638, 665; 275 NW2d 511 (1979) rehearing den. 406 Mich 1119 (1979), the Michigan Supreme Court stated:

> "This court has overruled prior precedent many times in the past and in each such instance, the court must take into account the total situation confronting it and seek a just and realistic solution of the problems occasioned by the change."
>
> * * *

This Court recognized that the issue of whether or not a precedent should be prospective application comes down to issues of fairness and the effect of the decision on the administration of justice. See Pohutski, et. al. v City of Allen Park, et. al., 465 Mich 675; 641 NW2d 219 (2002). In Pohutski, this Court stated in the pertinent part as follows:

"We are mindful, however, of the effect our decision may have in overruling *Hadfield's* interpretation of §7. As this Court noted in *Placek v Sterling Heights,* 405 Mich. 638, 665; 275 NW2d 511 (1979), quoting *Williams v Detroit,* 364 Mich 231, 265-266; 111 NW2d 1 (1961):

> 'This Court has overruled prior precedent many times in the past. In each such instance the Court must take into account the total situation confronting it and seek a just and realistic solution of the problems occasioned by the change.'

After taking into account the entire situation confronting the Court, we hold that our decision shall have only prospective application.

[36][37][38] Although the general rule is that judicial decisions are given full retroactive effect, *Hyde v Univ. of Michigan Bd. of Regents,* 426 Mich. 223, 240; 393 NW2d 847 (1986), a more flexible approach is warranted where injustice might result from full retroactivity. *Lindsey v. Harper Hosp.*, 455 Mich 56, 68; 564 NW2d 861 (1997). For example, a holding that overrules settled precedent may properly be limited to prospective application. *Id.* Moreover, the federal constitution does not preclude state courts from determining whether their own law-changing decisions are applied prospectively or retroactively. *Great Northern R Co. v Sunburst Oil & Refining Co.,* 287 U.S. 358, 364-365, 53 S.Ct. 145, 77 L.Ed. 360 (1932).

[39] This Court adopted from *Linkletter v. Walker,* 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965), three factors to be weighed in determining when a decision should not have retroactive application. Those factors are: (1) the purpose to be served by the new rule, (2) the extent of the reliance on the old rule, and (3) the effect of retroactivity on the administration of justice. *People v. Hampton,* 384 Mich 669, 674; 187 NW2d 404 (1971). In the civil context, a plurality of this Court noted that *Chevron Oil v. Huson,* 404 U.S. 97, 106-107, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971), recognized an additional threshold question whether the decision clearly established a new principle of law. *Riley v. Northland Geriatric Center (After Remand),* 431 Mich. 632, 645-646; 433 NW2d 787 (1988) (GRIFFIN, J.).

We turn first to the threshold question noted in *Riley.* Although this opinion gives effect to the intent of the Legislature that may be reasonably be inferred from the text of the governing statutory provisions, practically speaking our holding is akin to the announcement of a new rule or law, given the erroneous interpretations set forth in *Hadfield* and *Li.* See *Riley, supra; Gusler v. Fairview Tubular Products,* 412 Mich. 270, 298; 315 NW2d 388 (1981).

[40][41] Application of the three-part test leads to the conclusion that prospective application is appropriate here. First, we consider the purpose of the new rule set forth in this opinion: to correct an error in the interpretation of §7 of the governmental tort liability act. Prospective application would further this purpose. See *Riley, supra* at 646; 433 NW2d 787. Second, there has been extensive reliance on *Hadfield's* interpretation of §7 of the government tort liability act. In addition to reliance by the courts, insurance decisions have undoubtedly been predicated upon this Court's longstanding interpretation of §7 under *Hadfield*: municipalities have been encouraged to purchase insurance, while homeowners have been discouraged from doing the same. Prospective application acknowledges that reliance Third, prospective application minimizes the effect of this decision on the administration of justice."

(Pothutski at 695-697)

* * *

As Justice Fitzgerald noted in his concurring opinion in Cameron, courts in this State have consistently held that the one year Statute of Limitations of MCL 500.3145(1) of the No-Fault Act is subject to the minority provisions of §600.5851 and therefore, giving a minor or incompetent person one year of grace after the termination of the disability or minority in which to commence an action. This rule has been consistently applied since the Michigan Supreme Court's decision in Lambert v Calhoun, 394 Mich 179; 229 NW2d 332 (1975). In its decision, the Lambert court noted the unfairness of distinguishing between common law and statutory causes of action and that the application of the savings provision for minors and mentally incompetent persons was needed whether or not their actions are common law or Statutory. See Lambert at pp. 191-192. The idea that the legislature intended by the 1993 amendment to allow the tolling of Statute of Limitations where the limitations of actions is found within the Revised Judicature Act and not allowed tolling in no-fault cases or where minors or incompetents have suffered severe and devastating injuries lacks any reason or logic. Applying this analysis, a minor or incompetent person involved in a motor vehicle

accident would be able to toll the Statute of Limitations in an auto negligence case since the limitation of action is found in RJA, however would be unable to toll the Statute of Limitations in a first party no-fault case because of the No-Fault Act contains a separate limitation of actions for first party claims. MCL 500.3145(1). The idea that the legislature intended this result is illogical.

In fairness and for the efficient administration of justice, if this Court refuses to reverse the Cameron decision, this Honorable Court should limit the application of the Cameron decision prospectively. Legal practitioners, hospitals, healthcare providers, guardians, conservators, authoritative treatises (Michigan Civil Jurisprudence Limitation of Action, Sec 88-109) have relied upon the clear and uncontradicted case law which indicated that a minor and incompetent's cause of action or claim under the No-Fault Act was tolled by the RJA under the provisions of MCL 600.5851(1). If this opinion is applied retroactively, there will be a class of persons by virtue of the fact that they were severely injured in motor vehicle accidents who are denied their right to payment of medical expenses, wage loss, rehabilitation expenses, etc. This is clearly contrary to the purpose of the No-Fault Act which was to provide for the prompt payment of medical expenses. Further, hospitals and healthcare providers in certain situations where claimants have not filed their written application or lawsuits within one year of the accrual date will be denied appropriate reimbursement of medical bills. In certain cases, individuals will be required to obtain State Medicaid and/or other welfare benefits. This certainly was not the result the legislature intended by the 1993 amendment of the Revised Judicature Act. Instead, the legislature intended to shorten the Statute of Limitations for minors in medical malpractice cases and to limit the ability of prisoners to file lawsuits given

their litigious expertise exhibited throughout the years. The Cameron court, by interpreting the subtle change in language in the manner set forth in the opinion will have given the legislative effect of denying no-fault benefits in situations where for what could be a multitude of reasons, a written no-fault application or claim was not filed within one year of the accident or date of the expense was incurred.

Victims in serious traffic accidents are often overwhelmed by their devastating situations that they simply do not even begin investigating their benefits and rights for a substantial period of time and in some cases for more than a year after the accident date. Other individuals simply do not understand their rights. Individuals already disadvantaged by their injuries who will lose their right to seek no-fault benefits for which they were entitled under our no-fault system. This result will place a significant burden on Medicaid and the State Department of Mental Health. Further, for those practicing attorneys, guardians, conservators, healthcare providers, hospitals who are under the belief that tolling applied to minors and incompetents many causes of actions and benefits will be lost for people who need benefits the most, incompetents and minors simply because they were acting and providing advice that was well grounded in existing law. This result certainly was not contemplated by the legislature and certainly is not fair, just or equitable. Justice requires that this Honorable Court reverse this decision or at a minimum apply this opinion prospectively.

III.

IF THIS COURT DETERMINES THAT THE CAMERON INTERPRETATION OF THE 1993 AMENDMENT OF MCL 600.5851(1) IS CORRECT, THEN THE 1993 AMENDMENT OF THE MCL 600.5851(1) IS UNCONSTITUTIONAL.

If this Court determines that the Cameron court properly construed the 1993 Amendment of MCLA 600.5851(1), it becomes evident that the Amendment to the RJA, 600.5851(1) is unconstitutional. The Cameron interpretation causes MCL 600.5851(1) to discriminate against minors and incompetent persons depending on what cause of action they bring in Court. The effect of the Cameron decision is to treat minors and incompetent persons differently, depending on the nature of the claim. This violates the "Equal Protection" clauses of both the US and Michigan constitutions.

At issue are the following provisions from the Michigan and United States Constitutions:

> "Mich. Const 1963 art 1, §2: 'No person shall be denied the equal protection of the laws ...'. US Const, Am XIV: '...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

* * *

The Michigan Supreme Court has ruled that Michigan's constitutional guarantees of "Equal Protection" (Mich. Const. 1908, Art. 2, Sec. 1) are "co-extensive with the federal equal protection guarantees". Frame v Nehls, 452 Mich 171, 183; 550 NW2d 738 (1996). The Equal Protection clauses ensures that the government may not treat persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment. Miller v Johnson, 515 US 900, 919; 115 S Ct 2475; 132 L Ed 2d 762 (1995).

The Defendant will contend that the test to be applied is the "rational basis test" and will argue that, because the Michigan No-Fault Act is socioeconomic legislation, O'Donnell v State Farm Mutual Automobile Insurance Company, 404 Mich 524; 273 NW2d 829 (1977), that the rational basis test is used to review "Equal Protection" challenges.

However, it is not the Michigan No-Fault Act that is being challenged as unconstitutional. Rather, it is the 1993 Amendment to the RJA, 600.5851(1) that has been rendered unconstitutional, if one accepts the Cameron decision as being valid. The Defendant's expected argument regarding the constitutionality of the Michigan No-Fault Act is irrelevant.

> "Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. Traux v Corrigan, 257 US 312; 42 S Ct 124; 66 L Ed 254 (1921)."
>
> * * *
>
> "The Federal Constitution, it is only elementary to say, is the supreme law of the land, and all its applicable provisions are binding upon all within the territory of the United States. Whenever its protection is invoked, the courts of the United States, both State and Federal, are bound to see that rights guaranteed by the Federal Constitution are not violated by legislation of the State. One of the provisions of the Fourteenth Amendment thus binding upon every State of the Federal Union prohibits any State from denying to any person or persons within its jurisdiction the Equal Protection of the laws. Southern R Co. v Greene, 216 US 400; 30 S Ct 287; 54 L Ed 536 (1910)."
>
> * * *
>
> "It may be said generally that the Equal Protection Clause means that the rights of all persons must rest upon the same rule under similar circumstances. Kentucky Railroad Tax Cases, 115 US 321, 337; 6 S Ct 57; 29 L Ed 414 (1885)."
>
> * * *

"All persons similarly circumstanced shall be treated 'alike'. F.S. Royster Guano Co. v Virginia, 253 US 412, 415; 40 S Ct 560; 64 L Ed 989 (1920)."

* * *

The Cameron decision now interprets the 1993 version of MCL 600.5851(1) as discriminating between minors and mentally disabled people injured in automobile accidents and those injured by other means. Obviously, all such people are equally vulnerable and equally deserving of the protection of MCL 600.5851(1). Because of this discrimination, a violation of Equal Protection exists under the Federal and State Constitution.

CONSTITUTIONAL ANALYSIS

State courts evaluate Equal Protection challenges to the constitutional validity of the governments attempt to discriminate between classes of individuals by using one of three levels of "scrutiny." This depends on the nature of the class of people being discriminated against. Plyler v Doe, 457 US 202, 216-217; 102 S Ct 2382; 72 L Ed 2d 786 (1982). The highest level of review, or "strict scrutiny," is invoked where the law results in discrimination against "suspect" classes involving such factors as race, national origin, ethnicity or a fundamental right. When such factors are absent, an Equal Protection challenge requires either a "rational-basis" review or an immediate, "heightened scrutiny" review. Harvey v State of Michigan, 469 Mich 1, 6; 664 NW2d 767 (2003).

(A) HEIGHTENED SCRUTINY TEST

In order to determine the correct standard of review, the state court must first identify the characteristics of the class. "Heightened scrutiny" is required when:

"The class is saddled with such *disabilities*, or subjected to such a history of purposeful unequal treatment, or regulated to such a position of political

powerlessness as to command extraordinary protection from the Magaoritarian Political process. San Antonio Independence School District v Rodriguez, 411 US 1, 28; 93 S Ct 1278; 36 L Ed 2d 16 (1973)."

* * *

"This 'heightened scrutiny' standard has been applied to legislation creating classifications on such basis as illegitimacy (children) and gender. This standard recognizes that certain immutable distinctions exist in certain classes of persons, i.e. when such classification is identified more than a 'rational-basis' review is required. Harvey v State of Michigan, 469 Mich 1, 9; 664 NW2d 767 (2003)."

* * *

Thereafter, if the "heightened scrutiny" standard applies, two determinations must be made:

"The first determination is whether the classification *serves an important governmental interest.* The second determination is whether the classification is *substantially related to the achievement* of the important governmental objective. It is the judiciary's task to make each of these determinations. (Emphasis Added) Rose v Stokely, 258 Mich App 283, 303; 673 NW2d 413 (2003)."

* * *

There is no question that mentally disabled persons are "saddled" with a "disability" and have also been "subjected" to a history of unequal treatment. This is the reason why Michigan recognizes "handicapped" persons as requiring greater protection and accommodation than non-handicapped persons. The Michigan legislature has consistently created law to protect such persons. For example, the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq.* defines a "handicap" as including:

"Handicap means determinable physical or *mental characteristics* of an individual or a history of the characteristic which may result from disease, *injury,* congenital condition of birth, or functional disorder...."

(Emphasis Added)

* * *

Included within that legislation was the creation of the Civil Rights Commission which was empowered with rule making authority as well as the ability to sanction in an effort to prevent abuses to this particularly vulnerable class of individuals. In addition, the Michigan legislature created the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq. which provides specific vocational protections to guarantee equal treatment for handicapped individuals in the work place. As such, "disabled" persons maintain the "traditional indicia of suspectness" which require, at a minimum, "heightened scrutiny." Rose, *supra.*

(B) RATIONAL BASIS TEST

Under the Rational Basis review, Courts will uphold legislation as long as the legislation is rationally related to a legitimate government purpose. Dandridge v Williams, 397 US 471,485; 90 S Ct 1153; 25 L Ed 2d 491 (1970). To prevail under this highly deferential standard of review, a challenger must show that the legislation is "arbitrary and wholly unrelated in a rational way to the objective of the statute". Smith v Employment Security Commission, 410 Mich 231, 271; 301 NW2d 285 (1981). If one assumes, for sake of discussion in this section, that the Rational Basis standard applies to this analysis, the statute in question is still unconstitutional.

As noted above, an Equal Protection challenge requires the Court to make two determinations:

1. The governmental purpose behind the legislative enactment and,

2. How closely related the law is to the purpose. Crego v Coleman, 463 Mich 248, 269; 615 NW2d 218 (2000).

Statutes of limitation are grounded in important public policies such as providing Plaintiffs with a reasonable opportunity to bring lawsuits, providing Defendants with a fair opportunity to defend against them, preventing the Court system from being overburdened with stale claims, and protecting potential Defendants from prolonged of litigation. Chase v Sabin, 445 Mich 190, 198; 516 NW2d 60 (1994).

The public policy behind the savings provision of the RJA, MCL 600.5851(1) was addressed Smith v Quality Construction Company, 200 Mich App 297; 503 NW2d 753 (1993), where the Court said that:

> "A strict interpretation of the language leads to the conclusion that the statutes' [MCL 600.5851(1)] purpose is to extend the period for bringing a claim that has already accrued."
>
> (Smith, id at 300)

* * *

Thus, the governmental purpose in enacting MCL 600.5851(1) was to extend the time period in which a minor or mental incompetent person could bring a claim which has already accrued beyond the time period fixed by the applicable statute of limitations. This was done because the Courts have recognized that minors and mental incompetents carry additional handicaps that others do not, and, thus, need special protection.

Under the rational basis test, the statute will be upheld if it is determined that, as applied to the Plaintiff's claim herein, it is not "arbitrary and wholly unrelated in a rational way to the objective of" extending an incompetent person or a minor's right to bring a claim after the statute of limitations has expired. Smith, *supra* at 271. In the current case, there is no rational explanation that can be made that would support a law that purports to extend a

minor or incompetent person's right to bring a claim after a statute of limitations has expired EXCEPT when it involves Statutory cause of action with it's own limitation period. An incompetent person and/or minor requires protection regardless of the nature of the claim. The disability is not lessened depending on the cause of action.

The Defendant will likely argue that a claim for PIP benefits can be brought directly by a provider. This is totally irrelevant and has no bearing whatsoever on this claim. It is not the constitutionality of the No-Fault Act that is at issue. The amendment of 1993 MCL 600.5851 affects the rights of minors and incompetents in all statutory causes of action that contain their own limitation period not simply no-fault cases. The focus must be whether there is something indentifiably different about a minor or incompetent person who brings a particular type of claim. Without a legitimate explanation as to why the same class of individual should be treated differently depending on the nature of the claim they bring, the statute, as interpreted by the Cameron panel, is unconstitutional, because it now treats the same class of persons, ie, minors and incompetent persons, differently. Such a classification violates the Equal Protection clause of the US and Michigan Constitutions.

Under either the Heightened Scrutiny standard or the Rational Basis standard, the 1993 Amendment of MCL 600.5851(1) has been rendered unconstitutional by the Cameron panel's interpretation of the Amendment.

(C) CASE LAW FROM OTHER JURISDICTIONS

There are no cases from Michigan which directly address the issue presented in this Appeal. However, many other jurisdictions have addressed nearly identical issues and review of their rationale and decisions is instructive.

1. **Whitlow v Board of Education of Kanawha County, 190 W Va 223; 438 SE2d 15 (1993).**

In Whitlow, attached as **APPENDIX EXHIBIT J**, pp. 46a-55a, the Court held that the requisite statute of limitations violated the Equal Protection Clause found in West Virginia's Constitution, W. Va. Const. Art. X, §III. The Plaintiff was 15 when she was severely injured by falling bleachers at her school. The Plaintiff did not bring an action against the Board of Education for over three years after the incident. The trial court determined that the Plaintiff's claim was time barred according to West Virginia's statute of limitations for actions requiring the Plaintiff to bring her claim within two years. The West Virginia Supreme Court of Appeals reversed.

In Whitlow, Plaintiff argued that the general tolling provision for infants or insane should be applied, and that the two-year statute of limitations for actions brought against political subdivisions was unconstitutional, in violation of the equal protection clause of the state. The Defendant argued that there was a rational basis for classifying minors differently in actions against political subdivisions than in other tort actions. The Defendant argued that the legislative purpose was to limit the liability of political subdivisions in order to make the purchase of insurance more affordable to those entities and, thus, less costly for taxpayers.

The Court held "[m]ost courts addressing such challenges have found that statutes of limitations restricting a minor's right to file suit prior to reaching the age of majority are in violation of equal protection principle."

The Court in Whitlow then turned to the statute at hand. It recognized that the rational basis for the statute was to limit potential litigation and to assist political subdivisions in

obtaining affordable insurance. Applying rational basis review, the Court held:

> "However, the initial and obvious flaw in this reasoning is that minors have been selected for disparate and more severe treatment than others who are within their same class under the W. Va. Code, 55-2-15, i.e., the insane. This disparity alone is irrational and violated equal protection principles ... However, even if the insane were included ... we would still hold, as have other courts, that there is no rational basis for such disparate treatment of minors. ... We are unwilling to find a rational basis for the legislative reduction of the tolling period for minors in this case. Their rights to file suit are entrusted to a parent or guardian, who may also be a minor, or who may be ignorant or unconcerned, and who, by inaction, could cause the minor to lose the right to file a claim. To require a child of tender years to seek our another adult to vindicate the claim ... ignore[s] the realities of the family unit and the limitation of youth."
>
> * * *

The Auto Club in the case at bar is also arguing that the "rational basis" for the one-year statute of limitation in no-fault claims involving minors and incompetents is based on the legislature's goal of keeping a cost efficient, affordable automobile insurance system in place. However, as the Whitlow Court pointed out, this does not qualify as a legitimate, rational basis.

2. Schwan v Riverside Methodist Hospital, 6 Ohio St. 3d 300; 452 NE2d 1337 (1983).

In Schwan, attached as **ATTACHED AS APPENDIX EXHIBIT K**, pp. 56a-60a, the Ohio statute involved limited medical malpractice claims to those filed within one year of the alleged malpractice. The statute provided that minors under the age of ten would have until their fourteenth birthday to file a claim, but minors over the age of ten would have only one year to file their claim. The Court recognized the legitimate legislative purpose, but found the statute "irrational and unconstitutional because, 'it is the age of majority which establishes the only rational distinction."

3. **Lyons v Lederle Laboratories, 440 NW2d 769 (SD 1989).**

In Lyons, attached as **APPENDIX EXHIBIT L**, pp. 61a-67a, South Dakota limited medical malpractice claims by minors to a three-year statute of limitations, when minors pursuing other tort claims were given the benefit of a savings statute allowing them to initiate claims at any time before they reached the age of nineteen. The purpose of the separate medical malpractice statute "was to alleviate [a perceived medical malpractice] crisis and insure continued health care to citizens of [the] state." The Court found the statute unconstitutional, stating "the different statutory classifications of minors to be 'a classic example of arbitrariness,' and without a rational relationship to a legitimate legislative purpose." The factual scenario on the Lyons case is remarkably similar to the case at bar and the opinion of the Court in Lyons is equally applicable to the case at bar.

4. **Carson v Maurer, 120 N.H. 925; 424 A2d 825 (1980).**

In Carson, attached as **APPENDIX EXHIBIT M**, pp. 68a-80a, the Court addressed a medical malpractice statute of limitations reducing the time period of filing suit by minors. New Hampshire also had a general savings statute for those under a disability. The Court held "without elaboration ... 'The legislature may not, consistent with equal protection principles, deny only this class of medical malpractice plaintiffs the protection afforded all other persons by the savings statute."

5. **Adamsky v Buckeye Local School District, 73 Ohio St. 3d 360; 653 NE2d 212 (1995).**

In Adamsky, attached as **APPENDIX EXHIBIT N**, pp. 81a-88a, the plaintiff was injured on school property at age 14. Shortly before turning 20, she brought a personal injury action

against the school district. The trial Court dismissed the case because of the Ohio two-year statute of limitat6ion for actions against political subdivisions barred the claim. Plaintiff argued that the statute was unconstitutional because it violated the equal protection clause of Ohio's State Constitution. Applying rational basis review, the Ohio Supreme Court found that the two-year statute of limitations was unconstitutional. The Court held:

> "The goal of any general statute of limitations is to prevent plaintiffs from sleeping on their legal rights to the detriment of defendants. On its face, [the two-year statute of limitations] bears a real and substantial relationship to this goal. However, once applied to minors, it may satisfy this objective, but may also produce unfair results ... Adults have the full two years after the cause of action accrued to bring suit, whereas some minors, by virtue of their lack of standing to bring suit before they reach majority, are barred from pursuing their claims."
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> * * *
>
> "[t]he law has traditionally recognized that minors lack the maturity to act intelligently with regard to their legal rights. Thus, we promulgated Civ. R. 17 (B), which sets out how a suit may be brought on behalf of a minor." The Court further recognized "that in the vast majority of cases, parents, guardians or a next of friend ... will commence suite against a political subdivision on behalf of the minor before the statute of limitations has run. However, we can discern no rational reason to deny due process or the right to redress to those few children who, for whatever reason, did not have an action brought on their behalf within the two-year limitation period."
>
> * * *

The above reasoning is compelling. There simply is no rational reason to deny equal protection of MCL 600.5851(1) based on the cause of action. Therefore, consistent with the arguments and case law described above, the Cameron decision results in arbitrary discrimination among people of the same class by extending protection in one circumstance and denying the same protection to others of like kind in another circumstance. Arbitrary discrimination of this kind is unconstitutional.

Plaintiff respectfully request that this Court find that the decision in Cameron v ACIA, 263 Mich App 95; 687 NW2d 354 (2004) renders the 1993 Amendment of the savings provision of the RJA, MCL 600.5851(1) unconstitutional.

RELIEF REQUESTED

Plaintiffs/Appellants, **ESTATE OF DANIEL CAMERON, by DIANE CAMERON & JAMES CAMERON, Co-GUARDIANS,** respectfully requests this Honorable Court to reverse the decision of the Court of appeals, holding that the tolling statute applies to MCL 500.3145(1) of the No-Fault Act and/or that the 1993 Amendment to MCL 500.3145(1) is unconstitutional or, at a minimum, rule that the Cameron decision be applied prospectively only.

Respectfully submitted:

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Dated: July 6, 2005

PROOF OF MAILING

STATE OF MICHIGAN)
) ss.
COUNTY OF WASHTENAW)

KRISTINA JOHNSON, being duly sworn, deposes and says that she is not a party to the above described litigation, and that she enclosed in an envelope two (2) copies of:

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150 West Jefferson, Suite 1300
Detroit, Michigan 48226-4415

George T. Sinas / L. Page Graves
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Kristina Johnson
KRISTINA JOHNSON

Subscribed and sworn to before me on July 7, 2005.

Christa M. Rodriguez
Christa M. Rodriguez, Notary Public
Washtenaw County, State of Michigan
My commission exp: July 13, 2011
Acting in the County of Washtenaw

Prepared by:

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